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HDI-GERLING AMERICA INSURANCE COMPANY
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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9

10 FIREMAN'S FUND INSURANCE)
COMPANY, a foreign corporation a/s/o)
11 BASIC RESOURCES, INC. and GEORGE)
REED, INC., a foreign corporation,)

12 Plaintiff,

13 vs.

14 GERLING AMERICA INSURANCE)
COMPANY, a foreign corporation,)
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16 Defendant.
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CASE NO.: 3:07-cv-06302-CRB

**[PROPOSED] ORDER GRANTING
DEFENDANT HDI-GERLING AMERICA
INSURANCE COMPANY'S MOTION
FOR JUDGMENT ON THE PLEADINGS
[F.R.C.P 12(c)]**

Date: May 30, 2008
Time: 10:00 a.m.
Courtroom: 8

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19 Defendants HDI-Gerling America Insurance Company's Motion for Judgment on the
20 Pleadings under Federal Rule of Civil Procedure 12(c) came on regularly for hearing on May 30,
21 2008. The Honorable Judge Charles R. Breyer was presiding. Appearances were made on the
22 record.

23 After considering the moving and reply papers, all papers in opposition, the argument of
24 counsel and other pertinent matters, the Court GRANTS Defendant's Motion on the following
25 grounds:

26 Plaintiff Fireman's Fund Insurance Company ("FFIC") relies upon a judgment it obtained
27 against HDI-Gerling's insured as the basis for its claims for coverage under the HDI-Gerling
28 insurance policy. However, the judgment specifically states that it is "not an in personam

1 judgment” and cannot be executed against the insured. The HDI-Gerling policy states that HDI-
2 Gerling will pay those sums that the insured becomes “legally obligated to pay as damages.” As
3 FFIC’s *non in personam* judgment does not legally obligate HDI-Gerling’s insured to pay any
4 damages, HDI-Gerling’s duty to provide coverage is not triggered. Therefore, FFIC has no claim
5 for coverage under the HDI-Gerling policy and the Court orders an entry of judgment on the
6 pleadings in favor of HDI-Gerling.

7 IT IS SO ORDERED.

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9 Dated: _____, 2008
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12 _____
13 THE HONORABLE CHARLES R. BREYER
14 UNITED STATES DISTRICT COURT JUDGE
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